

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

BRENDA J. BEAL,

Plaintiff,

VS.

RICKY COLVIN, *et al.*,

Defendants.

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CIVIL ACTION NO. H-06-0667

**MEMORANDUM AND ORDER**

Plaintiff has moved to remand to state court this proceeding, which was removed by Defendants Derrick DeBerry and DeBerry Group, LLC (collectively, “the DeBerrys”). For the following reasons, Plaintiff’s motion is **GRANTED**, and the case is hereby **REMANDED**.

Plaintiff sued Defendant Ricky Colvin (“Colvin”) in the District Court of Harris County, Texas on July 28, 2005. Colvin was served on September 10, 2005. On January 6, 2006, Plaintiff filed her First Amended Original Petition, naming the DeBerrys as additional Defendants. The DeBerrys filed their notice of removal on March 1, 2006. Colvin did not join in the notice of removal and has not indicated his consent to it. Plaintiff contends that remand is appropriate because not all Defendants joined in the removal and the time within which the non-consenting Defendants could do so has expired. *See* 28 U.S.C. § 1446(b) (establishing a thirty-day limitations period on notices of removal).

In the Fifth Circuit, “all defendants must join in a removal petition.” *Brown v. Demco, Inc.*, 792 F.2d 478, 481 (5th Cir. 1986) (citing *Tri-Cities Newspapers, Inc. v. Tri-*

*Cities Printing, Local 349*, 427 F.2d 325, 326-27 (5th Cir. 1970)). The rule can seem harsh, particularly in a case such as this one, in which the non-consenting Defendant has not entered an appearance. The rule is, however, not one that this Court is entitled to ignore. Accordingly, Plaintiff's motion to remand is hereby **GRANTED**. Each party is to bear its own costs and attorneys' fees.

**IT IS SO ORDERED.**

**SIGNED** at Houston, Texas, on this the 24th day of April, 2006.

A handwritten signature in dark ink, appearing to read "Keith P. Ellison", is written over a horizontal line.

KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE

**TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES  
THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY  
OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH  
THEY MAY HAVE BEEN SENT ONE BY THE COURT.**